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TITLE 327 WATER POLLUTION CONTROL BOARD

FINDINGS AND DETERMINATION OF THE COMMISSIONER PURSUANT TO IC 13-14-9-7 AND SECOND NOTICE OF COMMENT PERIOD #04-320(WPCB)

DEVELOPMENT OF NEW RULES CONCERNING STATE PERMITS FOR CONSTRUCTION OF WATER POLLUTION FACILITIES AND SANITARY SEWERS

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for a new rule concerning state permits for the construction of water pollution treatment/control facilities and sanitary sewers. The purpose of this notice is to seek public comment on the draft rule, including suggestions for specific language to be included in the rule. IDEM seeks comment on the affected citations listed and any other provisions of Title 327 that may be affected by this rulemaking.

CITATIONS AFFECTED: 327 IAC 3-2-1.5; 327 IAC 3-2-3.5; 327 IAC 3-2-5.5.

AUTHORITY: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1.

STATUTORY REQUIREMENTS

IC 13-14-9-7 recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods routinely provided. In cases where the commissioner determines that the rulemaking policy alternatives available to IDEM are so limited that the notice of first public comment period would provide no substantial benefit, IDEM may forgo this comment period and proceed directly to the notice of second public comment period.

If the commissioner makes the determination of limited rulemaking policy alternatives required by IC 13-14-9-7, the commissioner shall prepare written findings and include them in the second notice of public comment period published in the Indiana Register. This document constitutes the commissioner's written findings pursuant to IC 13-14-9-7.

The statute provides for this shortened rulemaking process if the commissioner determines that "the rulemaking policy alternatives available to the department are so limited that the public notice and comment period under [IC 13-14-9-3]... would provide no substantial benefit to:

- (1) the environment; or
- (2) persons to be regulated or otherwise affected by the proposed rule."

BACKGROUND

Sunset Legislation

In 1996, the Indiana Legislature provided for the expiration of certain administrative rules unless expressly readopted under IC 13-14-9.5. 327 IAC 3-2, construction of water pollution treatment/control facilities and sanitary sewers, is subject to IC 13-14-9.5. All rules adopted after December 31, 1995, expire on January first of the seventh year after the year in which the rule takes effect. IC 13-14-9.5-4(a) provides that the department or board that has rulemaking authority under Title 13 may readopt all rules subject to expiration under one rule that lists all rules that are readopted by their titles and subtitles only. IC 13-14-9.5-4(b) provides that if a person submits to the department or board that has rulemaking authority under Title 13 a written request and a basis for the request during the first comment period that a particular rule be readopted separately from the readoption rule described in subsection (a), the department or board must readopt the rule separately from the readoption rule and follow the procedure for adoption of administrative rules under IC 13-14-9 with respect to the rule. 327 IAC 3-2 was first noticed for readoption in the first sunset rulemaking (LSA #00-46). Because a request and a basis for the request was submitted during the first comment period, 327 IAC 3-2 was not readopted in the first sunset rulemaking. Other sections of the rule were amended in 1999; however, sections 1, 3, and 5 were not amended and have, therefore, expired.

Purpose of Rule and Explanation of Limited Policy Alternatives

Part of Indiana's construction of water pollution treatment/control facilities and sanitary sewers rule, 327 IAC 3-2-1, 327 IAC 3-2-

3, and 327 IAC 3-2-5, were not amended when the rule was opened for amendment and adopted in 1999. 327 IAC 3-2-2, 327 IAC 3-2-2.5, 327 IAC 3-2-4, and 327 IAC 3-2-6, remain in effect until January 1, 2006. The expired sections of the rule are authorized under IC 13-18-3 and other general authorities. These sections provide essential application information, procedures, and conditions for construction approval. Therefore, a complete rule is necessary to provide such information to the entities required to obtain facilities construction permits and to adequately protect Indiana's waters. Therefore, rules identical to the expired sections should be expeditiously adopted to allow for continuity in the construction permit program. There are limited policy alternatives because the construction of water pollution treatment/control facilities and sanitary sewers require a permit under state law and state law requires the adoption of rules for the issuance of such permits. The number of permittees that are covered by 327 IAC 3-2 is not known since the rule concerns the future permitting of construction activities. This rulemaking will provide an opportunity for public comment and adoption of 327 IAC 3-2-1.5, 327 IAC 3-2-3.5, and 327 IAC 3-2-5.5. The proposed language in these sections is identical to the language in the expired sections.

IC 13-14-9-4 Identification of Restrictions and Requirements Not Imposed Under Federal Law

Elements of the draft rule impose either a restriction or a requirement on persons to whom the draft rule applies that is "not imposed under federal law" (NIFL elements). However, this rule is required under IC 13-18-3-1 and IC 13-18-3-12. IC 13-18-3-1 requires the water pollution control board to adopt rules "for the control and prevention of pollution in waters of Indiana..." IC 13-18-3-12 provides exemptions from construction permitting in certain situations. Any proposed construction of sanitary sewers that does not meet those exceptions must acquire a state permit.

There is expected to be no additional fiscal impact to affected entities with the adoption of this rule. The rule merely readopts permitting requirements that have been implemented under the expired rules since those expired rules were adopted in 1987.

FINDINGS

The commissioner of IDEM has prepared written findings regarding rulemaking on 327 IAC 3-2, state permits for the construction of water pollution treatment/control facilities and sanitary sewers. These findings are prepared under IC 13-14-9-7 and are as follows:

- (1) This rule is necessary for the continuation of the construction permitting program under 327 IAC 3-2.
- (2) The expiration of 327 IAC 3-2-1, 327 IAC 3-2-3, and 327 IAC 3-2-5 occurred because those particular sections were not amended in the 1999 rulemaking concerning 327 IAC 3-2. The expiration was unintentional.
- (3) The draft rule language merely repromulgates the expired sections of the rule to allow the construction permit program to provide necessary information to applicants seeking construction permits required under state law.
- (4) I have determined that under the specific circumstances pertaining to this rule, the rulemaking policy alternatives are so limited that the public notice and comment period provided in the notice of first public comment period would provide no substantial benefit to the environment or to persons to be regulated or otherwise affected by the rule.
- (5) The draft rule is hereby incorporated into these findings.

Lori Kaplan
Commissioner
Indiana Department of Environmental Management

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the rule. Mailed comments should be addressed to:

#04-320(WPCB) State permits for construction of water pollution control facilities
Larry Wu, Chief
Rules Development Section
Office of Water Quality
Indiana Department of Environmental Management
P.O. Box 6015
Indianapolis, Indiana 46206-6015.

Hand delivered comments will be accepted by the IDEM receptionist on duty at the twelfth floor reception desk, Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 232-8406, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Section at (317) 233-8903.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by January 31, 2005.

Additional information regarding the rulemaking action may be obtained from Larry Wu, Rules Development Section, Office of Water Quality, (317) 233-8544 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 327 IAC 3-2-1.5 IS ADDED TO READ AS FOLLOWS:

327 IAC 3-2-1.5 Requirement of valid permit

Authority: IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1

Affected: IC 13-18-2

Sec. 1.5. No person shall cause or allow the construction, installation, or modification of any water pollution treatment/control facility or sanitary sewer, without a valid construction permit issued by the commissioner. (*Water Pollution Control Board; 327 IAC 3-2-1.5*)

SECTION 2. 327 IAC 3-2-3.5 IS ADDED TO READ AS FOLLOWS:

327 IAC 3-2-3.5 Conditions of approval

Authority: IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1

Affected: IC 13-18-2

Sec. 3.5. (a) The permit may specify expiration dates by which the construction must be started and completed, which dates shall be compatible with any Federal and/or State grants or grant funds impacted. The commissioner may grant an extension of time for start and completion of construction if the commissioner believes such extension is necessary and justified.

(b) The commissioner shall have the authority to specify the limits and conditions necessary to insure proper design and ease of operation of water pollution treatment/control facilities.

(c) Sanitary sewers which have been issued construction permits shall be tested for infiltration/exfiltration in a method approved by the commissioner. All force mains shall be tested for leakage in an approved method. Results of the infiltration/exfiltration test for sanitary sewers and leakage test for force mains shall be submitted for approval within ninety (90) days of completion of construction. Failure to submit test results within the allotted time period or failure to meet guidelines for infiltration/inflow and leakage would be subject to enforcement proceedings as provided by 327 IAC 3-5-3.

(d) Sanitary sewers that are flexible in type and which are issued construction permits shall be tested for vertical deflection. The tests shall be conducted after the final backfill has been in place at least thirty (30) days. No flexible sewer shall exceed a vertical deflection of five percent (5%). (*Water Pollution Control Board; 327 IAC 3-2-3.5*)

SECTION 3. 327 IAC 3-2-5.5 IS ADDED TO READ AS FOLLOWS:

327 IAC 3-2-5.5 Non-site-specific permit

Authority: IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1

Affected: IC 13-18-2

Sec. 5.5. The commissioner may grant a non-site-specific construction permit for the following category of discharger: Short term drainage/sediment control lagoons.

(1) Said lagoons are those constructed according to approved general plans and specifications, however, the specific site location changes with time.

(2) Any request for issuance of such a non-site-specific, on-going construction permit shall be made by the applicant in conjunction with the application information presented in 327 IAC 3-2-2.

(3) It shall be the responsibility of the recipient of such a permit to notify the commissioner each time of a change in location of the permitted facility.

(*Water Pollution Control Board; 327 IAC 3-2-5.5*)

Notice of First Meeting/Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on March 9, 2005 at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Water Pollution

Control Board will hold a public hearing on a proposed new rule concerning state permits for the construction of water pollution treatment/control facilities and sanitary sewers.

The purpose of this hearing is to receive comments from the public prior to preliminary adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed new rules. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Larry Wu, Rules Section, Office of Water Quality, (317) 232-8635 or (800) 451-6027 (in Indiana).

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator

Indiana Department of Environmental Management

100 North Senate Avenue

P.O. Box 6015

Indianapolis, Indiana 46206-6015

or call (317) 233-0855 or (317) 233-6565 (TDD). Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Office of Water Quality, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Room 1255 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.